IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2330 OF 2007

...

Shri Bhimgonda Appaji Patil ...Petitioner

v/s.

The State of Maharashtra & ors. ...Respondents

...

Mr.N.V.Bandiwadekar for the Petitioner.
Mr.A.H.Palekar, AGP for the Respondents Nos.1 to 3.
Mr.M.S.Topkar for Respondents Nos. 32, 4, 6 & 7.

...

CORAM: D.K.DESHMUKH &
V.M.KANADE, JJ.

DATED: 22ND NOVEMBER, 2007

P.C.:

1. Rule. Returnable forthwith. Heard finally by consent of parties.

2. By this Petition the Petitioner, who is admittedly in service of Respondent No.4-school makes a grievance against the order dated 31-1-2007 passed by the Head Master declaring the Petitioner as surplus in the service of the school because of the abolition of certain Divisions.

3. The submission of the Petitioner is that this order is contrary to the order passed by the Education Officer under the provisions of M.E.P.S.Act and Rules framed thereunder dated 16-11-2006. According to that order, there are three teachers who are junior to the Petitioner. Admittedly, the order of the Education Officer dated 16-11-2006 has not been set aside and was definitely in force on 31-1-2007 when the order declaring the Petitioner as surplus was made.

4. We have heard the learned Counsel for all sides.

5. The learned Counsel appearing for the Management and the teachers, who are shown as junior to the Petitioner in the order dated 16-11-2006, except for saying that the Management and those teachers have

filed a petition in this court challenging the order dated 16-11-2006 is not in a position to explain as to how and why the Head Master passed the order dated 31-1-2007, which is in terms contrary to the order of the Education Officer dated 16-11-2006 when admittedly that order is in force and was not set aside by any court or by any competent authority. There can be no debate that the order dated 31-1-2007 is in terms contrary to the order dated 16-11-2006 passed by the Education Officer, which shows that there are three teachers in school who are junior to the Petitioner. The order dated 31-1-2007 passed by the Head Master is, therefore, liable to be set aside.

6. In the result, therefore, the present Petition succeeds and is allowed. Rule made absolute in terms of prayer clause (b) of the petition.

(D.K.DESHMUKH, J.)

(V.M.KANADE, J.)